

Amendment  
Serial No. 10/570,152  
Attorney Docket No. 062120

### **REMARKS**

Claims 1-6 were pending in the present application. Claims 1-5 were rejected. Claim 5 is herein amended. Claims 1-4 and 6 are herein cancelled without prejudice. New claims 7-14 are added herein.

### **Applicants' Response to Objections to the Specification**

The Office Action states that on page 7, line 21, "Figs. 6(a) to 6(b)" should instead read "Figs. 6(a) to 6(c)." Applicants herein amend the specification in order to attend to this correction.

### **Applicants' Response to Claim Rejections under 35 U.S.C. §102**

**Claims 1-5 were rejected under 35 U.S.C. §102(e) as being anticipated by Minami (U.S. Patent No. 6,985,804).**

It is the position of the Office Action that Minami discloses the invention as claimed. Minami is directed at an evaluation system for vehicle operating systems. In response, Applicants herein cancel claims 1-4. Additionally, as discussed below, Applicants herein amend claim 5 in order to incorporate allowable subject matter. Thus, this rejection is moot.

**Allowable Subject Matter**

The Office Action indicates that claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Accordingly, Applicants herein amend claim 5 in order to incorporate the allowable subject matter of claim 6. Thus, Applicants respectfully submit that claim 5, as amended, is allowable.

**New Claims**

Applicants herein add new claims 7-24. Applicants herein comment on these new claims with respect to the cited art.

One of the features of new claims 7, 17, 19 and 23 is measuring a fuel consumption ratio corresponding to the work done by a construction machine. However, Minami describes that a device measures the fuel consumption rate per traveled distance only. Thus, none of the cited documents describes this feature of new claims 7-24.

Additionally, claims 8 and 20 recite that the construction machine includes a traveling unit and a working machine mounted on the traveling unit, and that the fuel consumption ratio is the fuel consumption per work done by the working machine, instead of the traveling unit. In a construction machine having a traveling unit and a working machine, the traveling unit and the working machine both use fuel respectively. But, the construction machine of the present application measures the fuel consumption ratio corresponding to the work done by the working

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machine, instead of by the traveling unit. Minami and any other cited documents fail to describe a construction machine which includes this feature.

Therefore, Applicants respectfully submit that new claims 7-24 are patentable over the cited art. Thus, it is respectfully requested that all claims pass on to allowance.

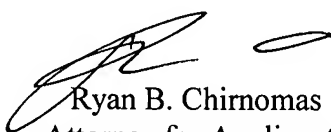
For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned attorney.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted, .

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